

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:10cv163**

PHILADELPHIA INDEMNITY INSURANCE COMPANY,)	
)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
X-WIRE TECHNOLOGIES, INC.,)	
)	
)	
Defendant.)	
)	

THIS MATTER is before the court on plaintiff's Motion for Judgment on the Pleadings (#8). Such motion was filed on June 23, 2010, and later supported with a Memorandum of Law (#9) on May 31, 2011. Review of all of the pleadings reveals that defendant has failed to respond to such motion within the time provided and has otherwise failed to seek to set aside the entry of the default in this matter despite its entry June 21, 2010.

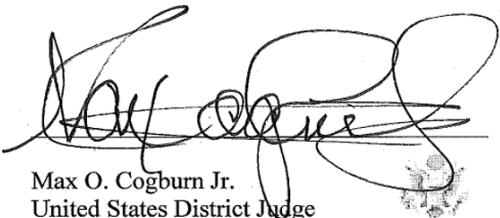
While default judgment is not available where, as here, the plaintiff seeks only declaratory relief, the court has considered the plaintiff's Motion for Judgment on the Pleadings. Review of the pleadings before the court, which include the Complaint and two exhibits consisting of the insurance policy at issue as well as the Complaint in the underlying action, reveals that plaintiff is entitled to the declaratory relief it seeks. The policy at issue specifically excludes from coverage, in relevant part, claims or claim expenses arising from infringement of trademark service marks and trade names. Review of the Complaint in the California action reveals that all of the causes of action spring from defendant's alleged infringement of common law trademarks when it allegedly stole the website of plaintiff therein and then portrayed such website along with its allegedly protected marks as belonging to defendant when it attempted to resell such website. The court finds after such review that the policy provides no liability coverage for such alleged conduct and that plaintiff herein has no duty to defend defendant in the underlying action Value Home Auctions, Inc. V. X-

Wire Technologies, Inc., et al., No. SACV10-00150 (C.D. Cal.). The court will grant judgment in plaintiff's favor based on such uncontested showing.

ORDER

IT IS, THEREFORE, ORDERED that plaintiff's Motion for Judgment on the Pleadings (#8) is **GRANTED**, and **JUDGMENT** is entered providing that plaintiff owes defendant no liability coverage and no duty to defend in Value Home Auctions, Inc. V. X-Wire Technologies, Inc., et al., No. SACV10-00150 (C.D. Cal.)

Signed: June 27, 2011



Max O. Cogburn Jr.
United States District Judge